



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: WALLACH=20

In re Application of:) Conf. No.: 8216
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David WALLACH et al) Art Unit: 1647
))
Appln. No.: 08/981,559) Examiner: D. Romeo
))
Filed: April 13, 1998) Washington, D.C.
))
For: TNF MODULATION) July 8, 2002
))
) ATTN: PETITIONS

PETITION TO VACATE HOLDING OF ABANDONMENT

RECEIVED

Honorable Commissioner for Patents
Washington, D.C. 20231

JUL 12 2002

Sir:

TECH CENTER 1600/2900

Applicants are in receipt of a PTO-Form-1432 entitled "Notice of Abandonment", mailed June 17, 2002, designated Paper No. 21, which **erroneously** states that the present application is abandoned because of applicants' failure to respond to the Office letter mailed on July 12, 2001.

It is respectfully requested that such holding of abandonment be vacated as being erroneous, that the present application be reinstated, and that it be returned to the examiner for further action.

THE FACTS

Applicants received Paper No. 18, the Office Action mailed July 12, 2001, on July 13, 2001. On October 12, 2001, applicants filed a Notice of Appeal. A copy of the postcard

acknowledging receipt by the PTO is attached hereto. No fee was attached as a prior Notice of Appeal had been filed on February 26, 2001. On March 12, 2002, applicants filed their "Brief on Behalf of Appellant" in triplicate, along with a petition for a three-month extension of time and payment of the late fee and the fee which accompanies submission of an appeal brief. A copy of the postcard acknowledging receipt by the PTO is attached hereto.

As these papers have apparently been lost in the PTO, freshly resigned duplicate copies of each submission is attached. In addition, attached hereto are copies of pages 1 and 5 of the USPTO Revenue Accounting and Management System Credit Card Transactions showing that the Browdy and Neimark credit card account was charged on March 13, 2002, \$920.00 for the extensions of time for filing the appeal brief and \$320.00 for the appeal brief fee.

REMARKS

As it is clear from the above-noted postcard receipts that applicants did, indeed, timely respond to the Official letter mailed July 12, 2002, the Notice of Abandonment is erroneous and should be withdrawn (vacated). In this regard, the postcards by themselves should be sufficient evidence, as MPEP §503 states:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date sampled thereon by the USPTO.

Accordingly, it is requested that the abandonment of the present application be removed, the notice of abandonment be vacated, and the present application be reinstated and returned to the examiner for further action.

Additionally, as the Patent and Trademark Office has already charged the credit card of the undersigned for all applicable fees with regard to this application, no further fees are attached, nor are any authorized with respect to the Notice of Appeal or the Brief on Behalf of Appellant. It is further believed that no petition fee is required as this petition was necessitated as a result of an erroneous action of the PTO. Nevertheless, if any fee is deemed necessary for consideration of the present petition, please charge same to deposit account number 02-4035 of the undersigned.

Respectfully submitted,

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